

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1126 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
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BHAGVANDAS @ SITARAM PARUMAL GODVANI (SINDHI)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1126 of 2001
MR HR PRAJAPATI for Petitioner No. 1
Mr. H. L. Jani, Asstt. G.P. for Respondent No. 1-3
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 18/07/2001

ORAL JUDGEMENT

Heard learned advocate Mr. Prajapati for the petitioner and the learned AGP Mr. Jani for the respondents. In this petition under Article 226 of the the Constitution of India, the petitioner has challenged the impugned order of detention dated 30th December, 2000 passed by the Commissioner of Police, Baroda City

whereunder the petitioner has been ordered to be detained at the District Jail, Bhavnagar as Class II detenu. According to the grounds of detention communicated to the petitioner under section 9(1) of the Gujarat Prevention of Anti Social Activities Act, in all, three offences have been registered against the petitioner wherein last offence registered is dated 27th December, 2000 and the impugned order of detention has been passed by the detaining authority on 30th December, 2000. The petitioner has been considered as bootlegger as defined under section 2(b) of the PASA Act. The statements of the secret witnesses as recorded on 22nd and 23rd December, 2000 were verified by the detaining authority on 28th December, 2000 and the third statement of the secret witness recorded on 25th December, 2000 was verified by the detaining authority on 29th December, 2000. As per the grounds of detention, the petitioner is involved in three unregistered offences. The first unregistered offence is dated 19th November, 2000 and the second is dated 9th December, 2000 whereas the third is dated 21st December, 2000. The respondents have filed reply to the present petition.

2. Learned advocate Mr. Prajapati has raised various contentions while challenging the impugned order of detention. However, according to him, one contention is enough for quashing the impugned order of detention. He has submitted that in ground (h), the petitioner has raised the following contentions :

"(h) The petitioner respectfully states that the detaining authority has mechanically exercised the powers conferred upon him under section 9(2) of the Act. The petitioner respectfully states that non supply of the names and addresses of the witnesses has adversely affected the right of the petitioner to make an effective representation guaranteed under Art. 22(5) of the Constitution of India. The petitioner states that the detaining authority has mechanically and without applying its mind accepted the proposal made by the sponsoring authority. The petitioner respectfully states that the statements of three witnesses were recorded on 22/23/25th December 2000 respectively were verified on 28th and 29th December, 2000 respectively and on the next day the order of detention was passed i.e. on 30.12.2000. Thus, there is mechanically exercise of powers in claiming privilege by the detaining authority.

The petitioner respectfully states that the detaining authority has not made any exercise to verify the genuineness and correctness of the fear expressed by the witnesses in their respective statements and has relied on verified statements and, therefore, the order of detention is required to be quashed and set aside."

In support of these contentions, he has relied upon the decision of this court reported in 2000(3) GLR 2696.

Learned AGP Mr. Jani has supported the impugned order of detention and has submitted that there is detailed reply filed by the detaining authority. He has submitted that after the statements of the secret witnesses were recorded, the detaining authority has subjectively satisfied itself in that regard and taking into consideration the activities of the petitioner which were prejudicial to the maintenance of public order, the detaining authority has passed the impugned order of detention in the compelling circumstances with due application of mind. He has submitted that, therefore, this court should not interfere with the impugned order passed by the detaining authority.

I have considered the arguments of the learned advocates for the respective parties. I have considered the contentions raised by the learned advocate Mr. Prajapati in ground (h) of the petition. It is not in dispute that the last offence registered against the petitioner is dated 27th December, 2000 and prior to that, the statements of the secret witnesses were recorded on 22nd December, 2000 and 23rd December, 2000 which were verified by the detaining authority on 28th December, 2000 and the statement of the third secret witness recorded on 25.12.2000 was verified by the detaining authority on 29.12.2000. Thus, after the statements were verified on 28th and 29th December, 2000, on the next day i.e. 30th December, 2000, impugned order of detention has been passed by the detaining authority hurriedly and in mechanical manner. The date of last registered offence against the petitioner is 27th December, 2000 and the impugned order of detention is dated 30th December, 2000 and in between, there was no time with the detaining authority to examine the genuineness of the statements which were verified by the detaining authority. While claiming privilege u/s.9(2) of the PASA Act, it is the duty of the detaining authority to verify the genuineness of the statements

made by the secret witnesses. Looking to the record, verification has been lastly done by the detaining authority on 29th December, 2000 and on the next day, impugned order of detention has been passed in mechanical manner. Detaining authority has to justify the claim made under sec. 9(2) of the PASA Act. Non-disclosure of the names and addresses of the secret witnesses would ultimately affect the right of the detenu to make effective representation under Article 22(5). Mere reliance upon such statements of the secret witnesses without verifying the fear expressed by them would amount to mechanical exercise of power in routine manner. The view taken by the division bench in this regard in decision reported in 1993(2) GLR 1659 is material. Said decision has been considered by the division bench of this Court in decision reported in 2000(3) GLR 2696.

I have also considered the decision reported in 2000(3) GLR page 2696 wherein the decision reported in 1993(2) GLR 1659 has been considered. Relevant observations are as under:

"After referring to *Kalidas C. Kahar v. State of Gujarat*, 1993 (2) GLR 1659, the Court observed:

The statements of the three witnesses in the instant case which were recorded before the [police inspector on 17th August, 1999, 21st August, 1999 and 25th August, 1999 with regard to the incidents dated 10th July, 1999, 13th June, 1999 and 26th June, 1999 were the material along with the proposal which is said to have been made on 27th August, 1999 and it is clear from the record that it was on 29th August 1999 that the detaining authority has recorded its verification of all these three statements. There is nothing on record to show that the detaining authority had considered the proposal dated 27th August, 1999 at any time prior to 29th August, 1999 and on 29th August 1999, all that has been done is that the concerned witnesses have stated before the detaining authority that the statements as had been made on the respective dates were correct and immediately thereafter on the following day, i.e., on 30th August, 1999 the detention order has been passed. (Para. 9).

The manner in which the verification has been recorded of the made by these three witnesses for the purpose of section 9(2) shows that the same

has been done only as an empty formality in as much as the same witnesses had been called before the detaining authority and the detaining authority had recorded that whatever statements made by the witnesses were correct. Thus, the whole exercise appears to have been done as a mechanical exercise and it is not borne out that there is an active application of mind on this aspect of the matter by the detaining authority for the purpose of verification of the facts as had been disclosed by the witnesses so as to express the fear and to invoke the privilege under Section 9 (2) against the disclosure of the names and addresses of the witnesses and it thus appears on the basis of the ratio of the decision of the Division Bench that it is a case of wrong exercise of power u/S. 9(2) and it is established that in such case the wrong exercise of power u/S. 9(2) adversely affects detenu's right of making an effective representation guaranteed under Article 22(5) of the Constitution of India. (Para. 9).

Once the materials are placed before the detaining authority with the proposal by the sponsoring authority it must have reasonably sufficient time for the purpose of verification of the facts and the consideration of the entire material with an active application of mind and the order has to be passed at the earliest opportunity, but in this process to strike the balance between the public interest and the right of the detenu either of the two should not be defeated in any manner and the whole process must indicate that the detaining authority had applied its mind with the requisite approach and it had also devoted sufficient time before arriving at the decision to claim the privilege u/S. 9(2) of the PASA Act and also to come to the conclusion that the detenu was required to be detained immediately. In the facts of the case, I find that this requirement of maintaining the balance has been defeated and the detention order has been passed on 30th August, 1999 i.e. on the next day to the date on which the materials were considered by the detaining authority."

Looking to the observations made hereinabove, according to my opinion, the impugned order of detention is required to be quashed and set aside.

For the reasons recorded hereinabove, the petition succeeds and the same is allowed. The order of detention dated 30.12.2000 is vitiated and resulted to quash and set aside. The detenu Bhagwandas alias Sitaram Parumal who has been detained at the Bhavnagar Jail be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct Service is Permitted.

18.7.2001. (H.K. Rathod, J.)

Vyas